

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GRACE MILES,

No. C-06-1295 MMC

Plaintiff,

ORDER RE: NOTICE OF REMOVAL

v.

ROYCE MAKISHIMA, et al.,

Defendants.

The Court is in receipt of plaintiff's "Notice of Removal of Action," filed September 24, 2008. As set forth below, the Court will strike the Notice of Removal and remand the action to the Superior Court of the State of California, County of San Mateo.

The following events have occurred in the instant action:¹

1. On November 17, 2004, plaintiff filed a complaint in the Superior Court of the State of California, County of San Mateo ("state court").

2. On February 22, 2006, the action was removed to the United States District Court for the Northern District of California ("District Court").

3. On September 25, 2006, the action was remanded to the state court; a three-week jury trial thereafter was conducted by the state court, beginning June 12, 2007 and

¹To the extent the Court refers to matters decided by and documents filed before other courts, the Court takes judicial notice of such decisions and filings.

1 continuing through July 5, 2007.

2 4. On September 28, 2007, defendant Royce Makishima filed for bankruptcy in the
3 United States Bankruptcy Court for the Eastern District of California ("Eastern District
4 Bankruptcy Court").

5 5. On October 12, 2007, the state court issued a tentative decision in the action,
6 resolving all claims in favor of defendants.

7 6. On April 28, 2008, plaintiff removed the action to the United States Bankruptcy
8 Court for the Northern District of California ("Northern District Bankruptcy Court").

9 7. On April 29, 2008, the Eastern District Bankruptcy Court modified the automatic
10 stay to permit the state court to enter final judgment in the action.

11 8. On July 16, 2008, the Northern District Bankruptcy Court remanded the action to
12 the state court.

13 9. On July 29, 2008, plaintiff filed both an appeal of the Northern District Bankruptcy
14 Court's order remanding the action ("First Appeal") and a motion for leave to file a motion
15 for reconsideration.

16 10. On August 4, 2008, the Northern District Bankruptcy Court denied plaintiff's
17 motion for leave.

18 11. On August 15, 2008, plaintiff appealed the denial of her motion for leave
19 ("Second Appeal").

20 12. Both the First Appeal and the Second Appeal are currently pending in the District
21 Court.


22 Because the Northern District Bankruptcy Court, a division of the District Court, has
23 ruled on the removal of the instant action, and further, because plaintiff has appealed that
24 ruling and her appeal is currently pending, plaintiff may not collaterally attack the Northern
25 District Bankruptcy Court's ruling by attempting to again remove the instant action to the
26 District Court.

27 Accordingly, the Notice of Removal is hereby STRICKEN and the action is hereby
28 REMANDED to the Superior Court of the State of California, County of San Mateo.

1 No further filings shall be accepted in this closed case.

2 **IT IS SO ORDERED.**

3 Dated: September 29, 2008

4 
MAXINE M. CHESNEY
United States District Judge